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The housing project, spatial experimentation and legal transformation in mid-twentieth century New York City

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It is on the grounds of 'eminent domain' and in the context of the great urban transformations that the city of New York underwent through the twentieth century that so much criticism is launched at urban actors such as Robert Moses. Blight often constituted the ground of legitimacy for the use of eminent domain. Blight is often condemned for its definitional ambiguity by both legal and urban historians. Yet if it is considered at the intersection of urban spatial reasoning's experimentation with the size of the neighbourhood in relation to the housing project, and at the point where it collides with legal argument and jurisprudential challenge around the notion of public benefit, it is possible to see an incredible productivity at work in the notion of blight. This paper argues that it is in fact the instrumentality of this definitional ambiguity that galvanises a broad and diverse dispute around housing. Rather than simply reflecting legal change, here the typological and diagrammatic spatial experimentation at work in the coming-into-form of the housing project can be seen iteratively to nudge transformation in legal and constitutional definition. This suggests a quite different kind of directed and specific material politics than that typically attributed to architecture's disciplinary skill set.

Introduction

It is on the grounds of the use of 'eminent domain' that so much criticism is launched at figures such as Robert Moses, the urban actor who did so much to reshape the city of New York during the middle of the twentieth century. An indication of the continued contemporary anxiety around its use in the reorganisation of cities in the USA can be seen in the response to the much more recent 2005 case of Kelo v. the City of New London.[1] This ruling reaffirmed the earlier 1954 Berman v Parker Supreme Court judgement which had found that, after much state-based, contradictory jurisprudential testing through the late-nineteenth and into the first half of the twentieth century, public use, understood as 'public benefit' as the grounds for the forced taking of land, could be extended in definition to include economic benefit within the 'takings' clause of the Fifth Amendment of the US Constitution: 'nor shall private property be taken for public use, without just compensation'.[2] For writers such as Robert Caro, in his epic account of Robert Moses, *The Power Broker*, or Richard Plunz's significant *History of Housing in the City of New York*, it was this shift in the 1950s that marked the broad untethering of the bulldozer to act on the slums, tenements, streets and neighbourhoods of New York, making way for new housing and infrastructure.[3]

In the immediate aftermath of the 2005 judgement, and with the concern that this power of eminent domain had once again been unleashed

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in cities across America, twenty-two states moved to amend substantially their state-based eminent domain laws, an indication of just how feared these laws of physical takings were. In doing so these states restricted the use of eminent domain, and with it the possibility that there might once again be the broad exercise of physical takings in cities and urban centres.[4]

Central to state and federal challenges to the use of eminent domain has been an ambiguity regarding the definition of public use as the grounds for claiming legitimacy in taking. The question of financial compensation is quickly resolved through independent evaluation, so it is on this secondary issue of public use that any challenge rests.

Recent writing in response to the consequences of Kelo v. the City of New London, such as Kelly in the *Cornell Law Review*, has argued for clarification of the definition of public use as the advancement of social welfare.[5] This is an attempt to address its use through arguments resting on broad notions of economic benefit.[6] Heller + Krier have written that the 'Supreme Court decisions over the last three-quarters of a century have turned the words of the takings clause into a secret code that only a momentary majority of the Court is able to understand.'[7] This follows on from a damning 1949 account of the jurisprudential testing of eminent domain in the Yale Law Review, the editorial describing a 'massive body of case law, irreconcilable in its inconsistency, confusing in its detail and defiant of all attempts at classification.'[8] Kelly has also argued that 'despite numerous attempts to understand the Public Use Clause, both courts and legal commentators have failed to provide an intellectually compelling interpretation.'[9]

The use of eminent domain through the first half of the twentieth century and leading up to the 1954 case appears on review less as an argument for the production of housing, and more the tool for the clearing of the city of substandard and unsanitary urban fabric, and where the basis of claiming the 'right to take' was in a constant process of definitional change. The housing reformer and planner Tracey B Auger, writing in the 1930s, argued that the housing project Stuyvesant Town '… was held not to be concerned with low rent housing for persons of low income, but to be justified on the grounds that it would result in the clearance and rehabilitation of substandard and insanitary areas. In short, a public subsidy is being granted not to get something that the public wants so much as to get rid of something that the public considers disadvantageous.'[10] Furthermore, the manual accompanying Title I of the American Housing Act of 1949, the Title that paved the way for 'slum clearance', explained that 'patching up hopelessly worn out buildings on a temporary or minimum basis presents the possible result of slum preservation rather than slum clearance … ..To achieve area-wide change, the solution was to aggregate large properties, clear them and rebuild on a large scale.'[11] In one way eminent domain was the mechanism that enabled this work.

For legal historians making an account of this change, but also for those writing urban histories of change and transformation, such as Plunz and Caro, the definitional elasticity of the notion of

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public use is deeply troubling. It is understood as the mechanism that is open to abuse by those interested only in financial gain, at the expense of neighbourhoods and communities dislocated, whilst the architectural object delivered on the occasion of change, the housing project, stands mute, a reflection of a series of legal, social and political changes external to it and occurring around it.

The ambition of this paper is to make visible these transformations from another angle, where urban spatial reasoning's experimentation with the size and scale of stable and dynamic neighbourhoods, and their animating condition of community, collides with legal argument and definitional challenge. Here, the ambiguity of concepts underpinning and galvanising arguments, such as those to do with blight, begin to appear less troubling, and can in fact be revealed to be very productive. As this paper will show, blight, understood as a discursive strategy, can be seen to bring together disputing social reform agendas, property interests and housing philanthropists. At the same time, the spatial reasoning at work through a series of housing projects can be seen to push at the definitional boundaries of legal doctrine through jurisprudential testing of notions such as public benefit in the state and federal courts. Here the use of mechanisms such as excess condemnation might be understood to be less the driver of architectural change, and more the consequence of architectural experimentation, part of a constant questioning of the size and scale of stable neighbourhoods and their animating condition of dynamic community.

The strategic exemplar diagram of the neighbourhood unit

We take for granted the idea that to think of the housing project, one is always thinking of urban infrastructure at the same time. However, by the late 1940s these had only just been linked in legislation through Title I of the American Housing Act. Now we understand that to work on housing is to work on the city itself: to take a site, abstract it, make it malleable, work on it and then put it back in a new articulation of the elements of work, home, leisure and transport. We expect the intervention to have an effect on its occupants, on the neighbourhood, on the city around it, at multiple scales in an iterative relationship of feedback within a trajectory of experimentation. It is possible to see continued evidence of this in a catalogue of new publications on housing that have emerged in the last fifteen years, including publications such as the *Floor Plan Manual*, *D-Book: Density* and *New Urban Housing*.[12]

This is not an argument for architectural determinism. To be involved in this work does not mean that one believes that buildings make their occupants act in specific ways. But it is recognition that the work of spatial reasoning, which is at the heart of the design process, and where it intersects with a governmental logic, positions us in a speculative relationship to each other, at multiple scales, in the interest of particular discursive issues: neighbourhood and its animating condition of 'community', as we shall see here, or the single-family dwelling and the dynamic organisation of the modern family, which is constituted agonistically between subject positions of mother, father and gender-specific child. From the

point of view of design, these relationships are speculative because the design process is iterative and cumulative, it acts, reflects, critiques, diagnoses and projects. In the early 1940s, however, this relationship between design and social constitution at the scale of neighbourhood was newly established.

Writing for the 'Proceedings in Joint National Conference on Housing in Chicago' in 1936, the housing reformer Tracey B. Augur asked:

> What does a wholesome community structure look like, and how does one lay out a housing site to approximate it? … . Sir Ebenezer Howard and Clarence Perry give us the first lead. Before (undertaking) site design we must begin with a unit of urban life that is capable of maintaining itself … Howard set up the Garden City as a type of metropolitan unit that could survive as a well-rounded healthy community uninfluenced by the ups and downs of urban life round it. Perry carried the same idea into the internal structure of cities in his neighbourhood unit, a residential cell capable of building up a community's life … capable of resisting tendencies to depreciation and disintegration.[13]

The 'neighbourhood unit' was first published as a diagram by the Russell Sage Foundation as part of the 1929 Regional Plan of New York and Its Environs,[14] produced by the urban reformer Clarence Arthur Perry (Fig. 1). Entitled 'The Neighbourhood Unit, a Scheme of Arrangement for the Family life Community', it existed in less coherent forms as a concept as early as 1923, with Perry presenting it in that year at a joint meeting of the National Community Centre Association and the American Sociological Society in Washington DC as part of a paper entitled 'A Community Unit in City Planning and Development'.[15] Described in the Regional Plan as a 'blueprint for residential neighbourhoods of the future',[16] the neighbourhood unit plan describes a new scale at which there could be material and organisational experimentation concerning the size and arrangement of the elements of collective life in the city: home, work, transport, leisure. Central to its reasoning, as Augur recognised, is this idea of resistance to the tendency to 'depreciation and disintegration'.

The diagram of the neighbourhood unit as it was published in 1929 shows a residential area of single dwellings bounded by arterial roads lined with retail and commercial development that act something like high streets. At its centre, and only ever a quarter-mile walk from these edge conditions, are the collective spaces of communal life: a park, a church or place of worship, a community centre and an elementary school. Ten percent of the total area of the plan was to be set aside as park and recreational areas. Through traffic was discouraged and held at the periphery by the wall of commercial development, whilst the internal streets often curve as *cul de sac*s. At approximately one hundred and sixty acres with around ten residential units per acre, the neighbourhood unit as proposed in 1929 was to house 5,000–9,000 residents, enough people to support the elementary school at its heart, which incorporated sporting facilities for community use.[17]

We might call Perry's 1929 drawing a strategic exemplar diagram. Whilst never actually built exactly so, it continues to be the model against

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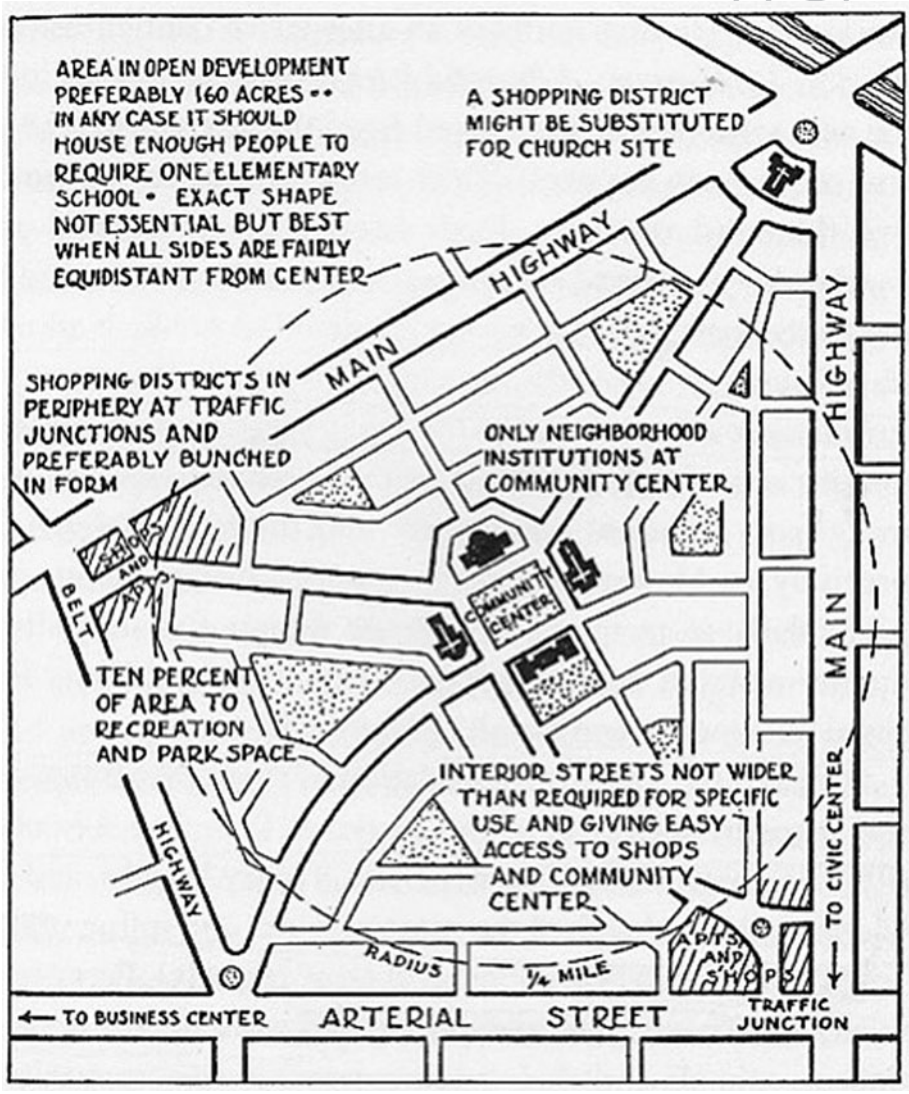

Figure 1. Neighbourhood Unit Plan: C.A Perry 'The Neighbourhood Unit, a Scheme of Arrangement for the Family-LifeCommunity', Monograph One, Neighbourhood and Community Planning, Regional Plan of New York and Its Environs (New York, Committee on Regional Plan of New York and Its environs, 1929), p. 88. (Used with the Permission of the Regional Plan Association, New York).

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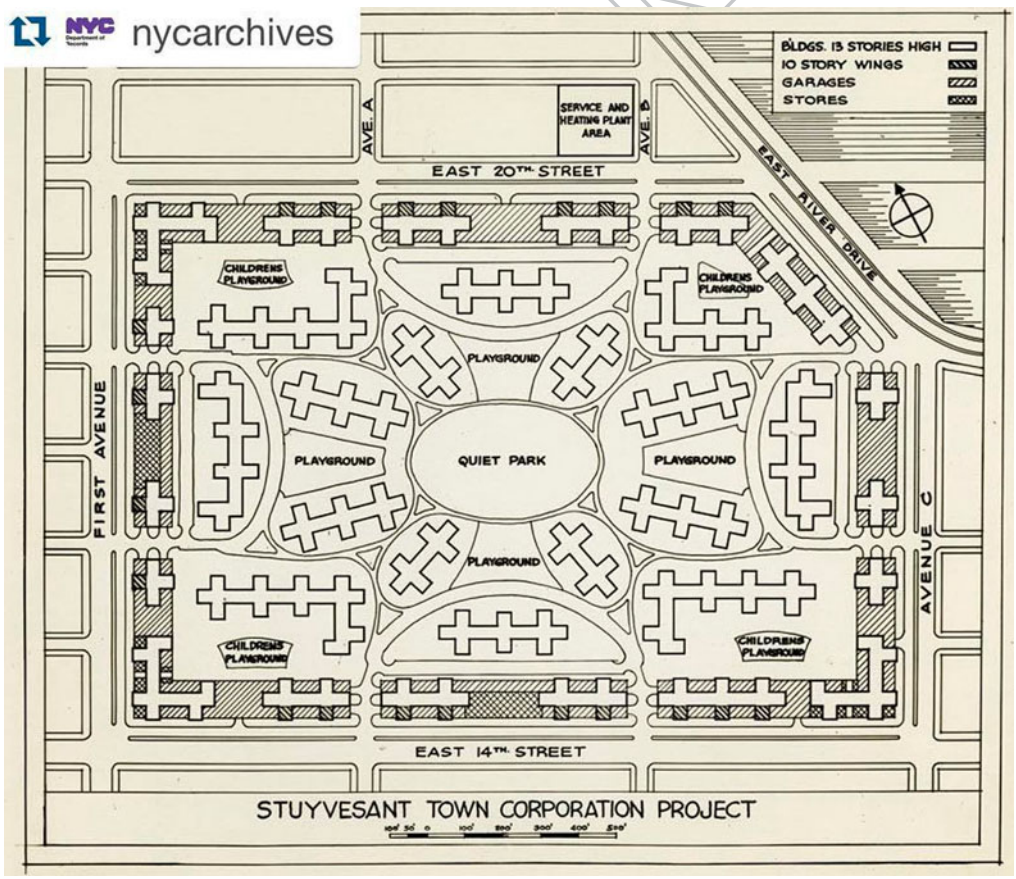

Figure 2. Stuyvesant Town, 1949; architects: Irwin Clavin, H.F Richardson, George Gore and Andrew J. Eken, under Gilmore D. Clark. [Source to be confirmed by the Author at proof stage.]

which we judge interventions into the city at the scale of sustainable community. In the context of the development of Stuyvesant Town in 1947 (Fig. 2), Augur asked 'is Stuyvesant Town an example of neighbourhood unit development? Certainly, it is not the familiar type—an open residential section housing a thousand families or so, set off by boundary streets or greenbelts and strongly centred in a school. Yet it has features that are pertinent to the planning of new residential districts, both in

New York and elsewhere.' He continued that the social unity and strength that Stuyvesant Town gained from its large size is 'the quality sought in the planning of residential neighbourhood units'.[18] It is certainly a critical reflective response to the diagram of the neighbourhood unit—regardless of its size.[19]

Central to Perry's 1929 plan is the relationship between space and organisation understood to be held in a kind of dynamic equilibrium. As well as borrowing heavily from the spatial organisation of the earlier work of planners such as Ebenezer Howard, these ideas leant heavily on work emerging from the Chicago School of Sociology in the first decades of the twentieth century. In 1925 Robert Park wrote, in an essay entitled 'Suggestions for the Investigation of Human Behaviour in the Urban Environment': 'It is important to know what are the forces which tend to break up the tensions, interests and sentiments which give neighbourhoods their individual character. In general, these may be said to be anything that tends to render the neighbourhood unstable, to divide and concentrate attentions upon widely separated objects of interest.' He then suggests that one ask the following questions: 'what part of the population is floating? Of what elements, i.e. races, classes etc. is this population composed? How many people live in hotels, apartments and tenements? How many people own their own homes? What portion of the population consists of nomads, hobos, gypsies?'[20] Unlike the zoned infrastructure of cities that would emerge toward the second half of the twentieth century, these 'moral neighbourhoods' are understood to be in an unstable equilibrium.

Writing sometime later in *The New Yorker*, in an article entitled 'Home Remedies for Urban Cancer', Lewis Mumford, in a reference to the problem of blight asked: 'what are the best possible urban patterns today for renovating our disordered cities',[21] The answer for Mumford was to be found in the neighbourhood unit, with its population thresholds, its community held in a productive but unstable equilibrium and the network of relationships centered around the 'school, church, market, clinic, park, library, tavern eating house, theatre'.[22] Isin, Osborne and Rose have more recently argued that the task of this kind of patterned spatial reasoning and organisation of the city '… is to restore their homogeneity and allow the re-alignment of spatial and moral zones—to return the city to its promise of happiness'.[23] The early neighbourhood unit, in its multi-scalar instrumentality, in its provision for the complex interaction of work, home, transport and leisure, argues for a nuanced and complex set of relationships in the city, a set of concerns that have emerged in the nineteenth and twentieth century as fundamental to the functioning of liberal democracy itself as part of governmental reasoning. As we shall see, it is the diagrammatic ground and the reference point for arguments around blight, and part of the consequent definitional transformation of the notion of public use within the Fifth Amendment of the US Constitution.[24]

In this context, reference to 'governance' or 'governmentality' is not reference to a specific doctrine of political or economic theory. Rather, following Michel Foucault's definition of liberal government, it is understood as a practice of critique of state

reason that examines the limitations and actual possibilities of government.[25] As Barth argues: 'Liberal government consists of the various instruments and rationalities assembled to link the power of the state, the regulation of populations, and a "pastoral" power which addressed itself to the conduct of those who recognized themselves as subjects. This raises the genealogical question of an art of government directed toward the conduct of all and each, in their individuality and uniformity, and which furthermore emphasizes the freedom of the subject as a central part of that art'.[26] For Foucault, liberal governmentality was a mode of thinking concerned primarily with the art of government present as much within socialism as it is within the capitalist democracies of Western Europe and North America, accounting for why we can see the same spatial reasoning at work in pre- and post-revolutionary China as we see in various degrees in North America, Brazil, the UK, France, Australia—and the City of New York at the same time through the neighbourhood unit. Liberal Governmentality as a practice 'seeks to identify how government is possible, what it needs to know and what it cannot know'.[27] Urban spatial reasoning or the spatial arrangement of functioning collectives of population has formed an important part of that practice. Key to this is through the first half of the twentieth century which has been a testing time for the stable relationship between home, work, leisure and transport at the scale of the neighbourhood. As can be seen in a series of large housing projects through the middle of the twentieth century in New York, by means of the constitutive elements of neighbourhood, there is an iterative search for the size of stability within a spatial reasoning: The Braunn and Munschenheim slum clearance proposal from 1934; Williamsburg Houses, 1938; Queensbridge Houses, 1940; Stuyvesant Town, 1947; Brownsville Houses, 1948; Fresh Meadows, 1949; and many others.

Urban redevelopment and renewal in the City of New York, 1890–1940

The period from 1890 to the 1940s was a period of intense urban expansion in cities across America, but particularly in the City of New York. It was a period that saw huge conflicts amongst urban reformers, philanthropists, industrialists and property interests in the building and delivery of housing and the clearing of cities of what were deemed to be unsanitary and unsafe building fabric.

Already during the 1920s and into the 1930s in New York City there was a paralysis in the production of public housing with a split emerging and two parallel disputes among housing reformers. The first of these concerned a question of what the best mechanisms were for changing the housing and living conditions of the poor. On the one hand, there was a belief in the legislation of tenements as a way of forcing landlords to upgrade and adjust their buildings; private philanthropy and model tenement buildings would then supplement this. On the other hand, there was a different group of reformers who were advocating the provision of government-funded public-housing programmes based on European models of high-quality, low-cost housing. This conflict, then, was between private philanthropy and legislative reform, on the one hand, and fully publicly-funded

government housing programmes on the other, a conflict that continued well into the 1940s.

In addition to this, there was a second dispute. It was connected to the first, but was concerned with the role of slum clearance in either of these positions. For one group, that included the social workers Mary Kingsbury Simkhovitch and Helen Alfred of New York and conservative reformers such as Bleecker Marquette of Cincinnati and Bernard Newman of Philadelphia, low-cost housing was to be provided by philanthropy and through the legislation of tenement reform, where it was understood that 'the way to improve the lives of the poor was through housing', and that eliminating slums was essential to achieving this goal. In opposition to this were housing reformers such as Catherine Bauer, and the architects Henry Wright and Oscar Stonorov, who believed that good public housing on vacant land at the outskirts of cities would eventually persuade slum dwellers to leave their tenements and relocate, thereby eliminating the need for condemnation and eminent domain proceedings. Either way, in the 1920s and 1930s slum clearance had great political and public appeal, quite distinct and separate from the question of housing itself. This was supported by the powerful and constitutive imagery produced by the muckrakers, those realist photographers, photojournalists and writers that worked to 'expose' corruption and scandal in business and politics, and labour and living conditions in US and European cities through the second half of the nineteenth century.[28]

In addition to this, by the 1940s there emerged in New York an intense dispute around the question of *who* would produce the housing in either of these scenarios. A conservative alliance of building, property banking and chamber of commerce organisations opposed state funding for public housing on the grounds that it was a 'socialistic' intrusion into the private market. Sitting in opposition to this group was a liberal coalition that included the Truman Administration, social welfare groups, trades unions, housing organisations and the US Conference of Mayors.[29] This second group argued that public housing was essential to any urban revival: cities needed public housing, they claimed, as a mechanism to help redevelop slums, and to alleviate the post-war housing shortage — and that it was the state's role to be involved in the delivery of this.[30]

Many attempts were made to bridge the divide between these two groups. As I have shown previously, already by the early 1930s proposals for very large areas of slum clearance were being made, such as the Brounn and Muschenheim (B + M) slum clearance proposal for fifty blocks of the Lower East Side, which saw great value in making room and clearing space out of the incredibly dense and crowded old and new law tenements of Manhattan and the other Boroughs of New York (Fig. 3).[31] The B + M proposal was made in the context of the introduction of the 1926 Limited dividend Housing Companies Act that allowed municipalities to use eminent domain for site assembly and slum clearance.[32] The New York Governor, Alfred Smith, said at the time of announcing the new law: 'I do so with the sincere hope that it may prove the beginning of a lasting movement to wipe out of our State those blots on civilization,

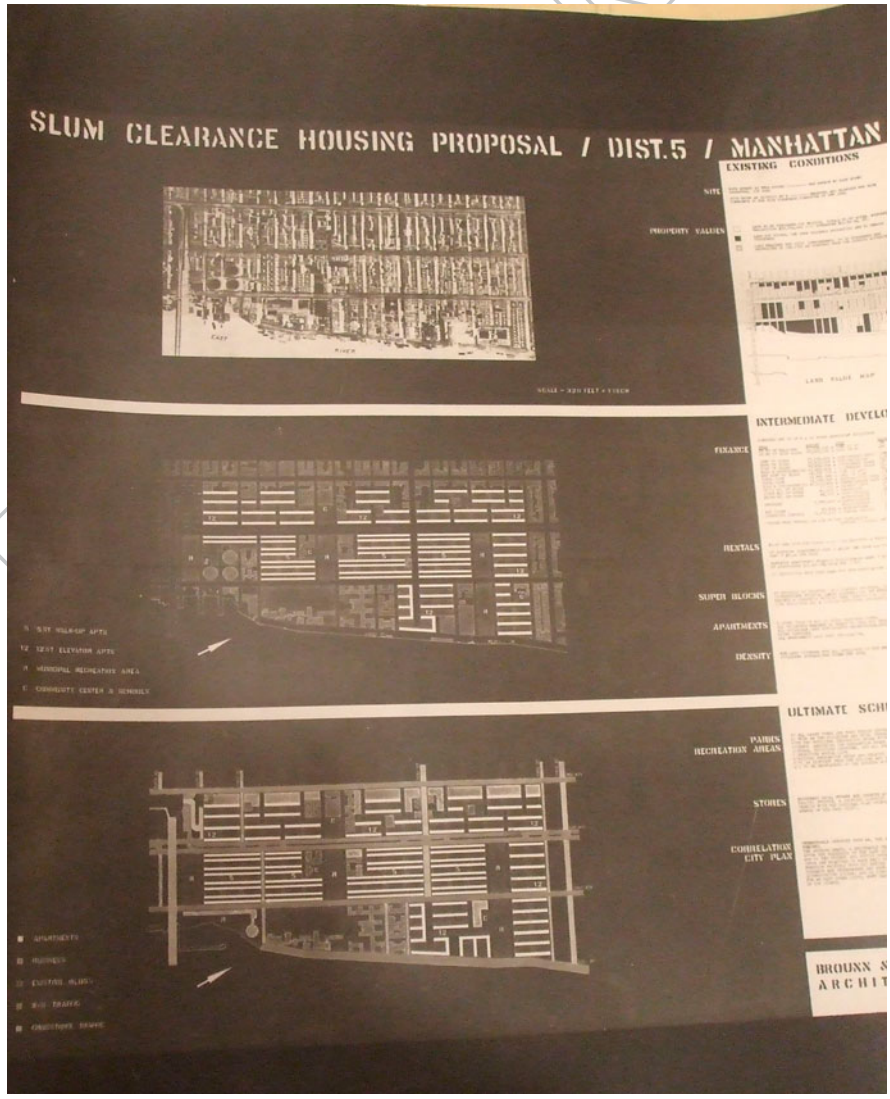

Figure 3. Brounn and Muschenheim, 1934: 'Incremental Moves in Proposal for Slum Clearance and fifty block housing project, Manhattan.' (Source: Muschenheim archive, Avery Architectural and Fine Arts Library, Drawings and Archives, Columbia University.)

the old, dilapidated, dark, unsanitary, unsafe tenement houses that long since became fit for human habitation and certainly are no place for future citizens of New York to grow in'.[33]

Economic interests, such as the National Association of Real Estate Boards (NAREB), campaigned intensively against public housing throughout the 1930s, taking the lead in the search for a national urban-redevelopment policy. This was because members were against public housing on ideological grounds, the belief being that housing projects competed with private business but did not pay taxes and were seen therefore as the 'opening wedge in an eventual takeover of the private housing industry by the government … and undermined the initiative and independence of American citizens'.[34] Its members and executive director Herbert U. Nelson fundamentally believed in 'free enterprise, and sought ways to redevelop slums that would give full sway to private entrepreneurs'.[35] NAREB were instrumental in convincing a conservative Congress to stop funding the federal assistance programme for public housing established under the 1937 Wagner-Steagall Housing Act.[36] And yet, despite this critique of publicly-funded housing, there was a general agreement for the removal of blight and slums. However, what remained for either of these groups was the difficulty in developing tenements.

The reasons were complex: the problem of land assembly and the associated costs had existed throughout the late nineteenth century. This was equally the case for urban reformers. Also during the 1920s and 1930s, whilst inner-city industrial and low-income residential areas might have been unsightly, they were generally profitable. They were typically 'located near city centres and major transportation routes'; these sites were in demand for factories, stores and low-rent residences. In addition there was the added expense of demolition and rebuilding once assembly was achieved. What was needed was a galvanising argument that allowed for a designation of a problem and the integrated proposition of a solution—'blight' provided this diagnostic and propositional tool, uniting private developers, property interests, social reformers, philanthropists and government agencies, all interested in the transformation of the city: by means of the mechanism of eminent domain, the compulsory acquisition of land.

The contagion of blight

On Stuyvesant Town's completion, Auger wrote that 'The greatest danger to successful urban redevelopment is that it will be attempted in a timid, piecemeal fashion and will fail for that one reason … little islands of redevelopment in a big sea of blight have little chance of survival'.[37]

Blight is a notoriously difficult term to define. As early as 1918 William Stanton stated that a blighted area 'is a district which is not what it should be',[38] without really clarifying any further what it should actually be. A 1932 Report from the President's Conference on Home Building and Homeownership offered a clarification that, whilst a blighted area could be defined as an area that was an economic liability to a community, a slum on the other hand was a social liability to a community.[39] There is a sense that a blighted area has a tendency to spread, decay, to move inexorably towards a state of degeneration and atrophy, a kind of pre-con-

dition of the slum. Its designation has transformed through time. Initially it was indicated by evidence of dilapidation, abandoned and deteriorating buildings, as well as health concerns over the spread of disease. One recognises in these descriptions the general social reform agenda of the first half of the twentieth century. More recently, definitions of blight have included 'too-small side yards', 'diverse ownership', 'inadequate planning' and lack of 'a two-car garage'.[40] Quintin commented in 1958 on the Federal Urban Renewal Program that: 'All large and most middle-sized American cities have extensive areas of blight with immediate prospects of these areas spreading. Blight is not restricted to residential neighbourhoods but includes commercial and industrial areas as well. It is usually located in central cities, but some suburban communities have blighted areas and the amount of suburban blight will probably increase rapidly. .... Statistical data on the amount of blight is very limited and unsatisfactory'.[41] Urban authorities found it difficult to measure blight quantitatively. yet as we have seen, they believed they knew what it looked like.

Further descriptions of blight from the 1950s account for its symptoms being: economic deterioration, such as declining property value; high incidence of tax delinquency, or low average rents; the existence of social problems, including a high incidence of delinquency and crime; the over-occupancy of dwelling units; and premises not maintained.[42] By the mid-1950s blight was also understood to affect non-residential properties, characteristics of which included: 'Dilapidation and deterioration of structures; inadequate original construction; inadequate basic building utilities and facilities; obsolete or obsolescent building types; improper building location, coverage, and use of land; inadequate or unsatisfactory public facilities or utilities; adverse influences from noise, smoke, and fumes. The symptoms of non-residential blight being economic deterioration, such as growing tax delinquency or migration of firms from the area and premises improperly maintained'.[43]

Blighted property is understood in terms of fears that it had the capacity to spread, it is even described in terms such as 'cancer'. Blight is also understood to be a thing that can be intervened in; it was seen to endanger the future of the city which, if not excised, would spread and destroy it.[44]

On what grounds can one 'take': eminent domain, legitimacy and blight

It is within the exercise of physical takings and on the occasion of the jurisprudential testing of the public-use clause within eminent domain that the usefulness of the ambiguity of blight can be powerfully seen. There is a widely held assumption that fundamental to sovereignty in the United States is the power of eminent domain. At the same time, and in contradiction, there is also a long-held, self-evident truth that the government, state or federal, cannot simply take the property or land of one person and give it to another. However, a review of the use of eminent domain through the twentieth century reveals both of these statements to be incorrect. The United States Federal Government did not assert its power of eminent domain in its own name, in its own courts, until 1875, with Kohl v. United States.[45] And, as Prichett has argued, the taking of private land to give to another person is precisely

what the Federal Government has been doing under the Fifth Amendment of the US Constitution:[46] 'nor shall private property be taken for public use, without just compensation'.[47]

The question of just compensation here is hardly ever controversial. It is generally established on the grounds of market value and resolved quickly. The question on which any challenge to the use of eminent domain is made in the courts is based on that of public use. However, prior to establishing a question of compensation or making a challenge on the grounds of public use, the question of relevance to law needs to be established. Because this opens up a conceptual field of what exactly constitutes property rights, it is worth considering the difference between regulatory and physical takings.

Physical taking of land is different from land that is subject to an ordinary regulation to which a property owner is required to submit.[48] An ordinary regulation may be understood as, for example, a zoning law that changes the value of a property, or it could be a change in the status of unimproved land, its protection as a wetland area by an administrative environmental conservation agency for example, an agency that then has no responsibility to compensate the private property owner for lost value due to this change.[49] This is in contrast to the form of taking whereby the government, state or federal, exercises its power of eminent domain and is able to compel a property owner to give up a property for 'public use' in return for compensation. Much attention in scholarly writing has been paid to regulatory taking and whether or not 'efficiency and justice' require the government to compensate property owners for this regulatory taking.[50] This makes sense when one considers the question of what constitutes property rights. Some have argued that, rather than property rights being a total right, which is the common-sense account, instead it should be understood as a bundle of minor rights that collectively give an individual sole-use rights, accounting for why the minor erosion of that bundle might be seen as such a cause for concern.[51]

Once the issue of compensation is resolved and the question of relevance is addressed, then the grounds for challenging the designation of physical takings pivots on these questions: on what grounds can the state 'compel'? What is the ground of legitimacy which the state claims when it takes the property of an individual to share the benefit with the many? This specific point has been the focus of continual court challenge in the United States since the 1890s.[52] The question of what definition constitutes 'public use' is key. This is also where blight's use value can be seen as part of the broader spatial reasoning at work through a discursive diagram such as the neighbourhood unit, and as part of disputes around urban change and transformation in the city.[53]

What is the right size of stable community?

State-based eminent domain takings had not been generally reviewed in the federal Supreme Court forum until the 1890s, and only after the limitations of the Fifth Amendment on federal takings were applied to the states under the Fourteenth Amendment, in 1868, as part of a suite of reconstruction amendments brought about following the US Civil War.[54]

Legal accounts of this move, such as an editorial in the *Yale Law Journal* (*YLJ*) from 1949, argue that prior to the adoption of the federal and early state constitutions, government rarely needed privately owned land, so the issue of taking had rarely emerged. The editors wrote: 'the abundance of unimproved and unoccupied private lands made the few instances of government acquisition relatively painless'.[55] As government activity expanded through the industrial nineteenth century, they argue, the definition of these terms became key for property-owners threatened with expropriation who attempted to show that the proposed takings were for projects unrelated to the public good.[56] The *YLJ* continues that the increasing pressure of industrialisation on the country generally led to the courts seeking to limit the exercise of eminent domain in the interest of protecting private property through clarifying definitions of 'public use'.' However, such a reading of the law's instrumentality in terms of urban change fails to see the iterative transformative agency that the spatial and typological experimentation into the size and scale of neighbourhood had during this period. It is on the occasion of the coming into form of the housing project along a trajectory of similar projects that it is possible to see this agency in operation.

At state level, and by the mid-nineteenth century, the definition of public use was becoming narrower. A distinction was drawn between a purpose beneficial to the public and a purpose in which the public had a 'right of use'.[57] Initially, 'the indirect contribution to the prosperity of the entire community', which came about as a result of activities that only a few individuals would profit from, was not sufficient to justify the exercise of eminent domain.[58] The distinction between these two ideas, *right to use* and *purpose beneficial to the public*, however, left in place many questions: What proportion of the public must have a right to use; what about payment for the privilege of using the thing for which eminent domain was deployed; 'where public utilities took property by eminent domain, would not private individuals alone—the stockholders—profit directly from the taking'?[59]

By the 1890s, and in early federal condemnation cases in which the question of public use was raised, two streams of enquiry emerge simultaneously. The first was a question of whether the use was in fact a public one; the second was whether the federal government had the constitutional power to condemn for the proposed public use.[60]

On the second of these issues, that of constitutional power, it was implied that the Supreme Court in early cases had the power to condemn and take, as part of those powers expressly delegated to it by the Constitution, that is, by the states.[61] In addition to eminent domain, these federal powers have included: the commerce power, the power to raise armies and the power to legislate for the District of Columbia, ie, Washington. As a consequence of a series of early challenges to it by the Supreme Court on the grounds of eminent domain, and as part of a definitional challenge more broadly, questions then began to emerge of what in fact the transforming role of the United States Federal Government was. The extent of this is evidenced in a case regarding Native-American land claims from 1939. In this

instance, the federal government had first to prove or establish that it had the constitutional power to act as the guardian of native people: an open question prior to this. Only once this was established, could it in fact then act in their interest—'a profound question of sovereign definition and responsibility with significant consequences regarding citizenship beyond simply the issue of a specific land claim'.[62]

Once the role of the Federal Government was transformed to meet the question of the court, the question of whether the use was in fact a public one could be addressed. During the 1940s there had been a tendency in the lower federal courts to blend the two limitations of public use and constitutional power into one issue, where questions of definitions of sovereignty were brought together around issues of blight. This was to counter a perceived threat from excess condemnation. Excess condemnation was the practice of taking more property than was actually necessary for the creation of public improvement, and then subsequently selling or leasing the surplus land, often, it is argued, as a way of recovering costs.[63] Another way of considering this excess claim of property, and positioned within the spatial reasoning at work in the neighbourhood unit, is that predicating all of these actions is a question as to the size of the unit of stable population and spatial organisation. Excess condemnation argued on the occasion of blight provided a method of controlling the development of an area immediately surrounding a public improvement. If the size of community/neighbourhood was the question on the table being iteratively worked with, one would need room to flex that reasoning. Along with a series of regulatory and legislative mechanisms developed in the early decades of the twentieth century, such as the public authority,[64] excess condemnation worked to link a question of space with a question regarding the size of governance and therefore planning. It fundamentally asked the question: at what size should we govern? Excess condemnation can be understood as a tool that enabled this search for the size of functioning balanced spatial units.[65]

What this paper has attempted to show in the specific context of New York City is that it is precisely the functional ambiguity of blight that is so valuable to it as a discursive strategy. As it gets called on to justify the grounds of legitimacy in physical takings, and as part of the jurisprudential testing of the public-use clause within the Fifth Amendment, blight operates to galvanise dispute cultivated as part of a continual process of formal, spatial and material experimentation into the size of stable neighbourhood and community. This is a process in which the discipline of architecture is profoundly engaged, but that it has only limited agency over. Projects such as Stuyvesant Town, and the diagram of the neighbourhood unit that was involved in its production, is not a reflection of legal change, but rather legal change is being driven by means of an iterative process of spatial testing on the occasion of housing, and as part of jurisprudential testing of the public-use clause in physical takings. There is change in the definition of law at a state and federal level, but also definitional change within the US constitution itself as jurisprudential challenge makes its way through the Supreme Courts and questions of Sovereign responsibility are asked. Rather than seeing the single architectural object

as a mute reflection of legal change, what this suggests is that there is a direct material politics evident in a trajectory of experimentation through a number of projects, as architecture's material and formal skill set nudge at the edge of law, challenging and transforming it as part of a consistent questioning of the size of stable neighbourhoods.

Notes and references

1. A brief account of Kelo v. City of New London is useful in understanding the degree to which this mechanism continues to work in the city. New London is located in south-eastern Connecticut. Founded in the seventeenth century, it had a population in the early 2000s of around 25,000 people. It suffered progressive economic decline throughout the late twentieth century and was designated a 'distressed municipality' by 1990. The city's population had declined by almost thirty percent from a high in the early 1960s, following general patterns of decentralisation; its unemployment rate was twice the state average by 1998. The New London City Council gave initial approval for preparation of a development plan, and the NLDC began holding community meetings and consultations with property owners and residents. A final plan adopted by the NLDC in early 2000 was subsequently approved by the City Council. It divided the area into seven development parcels. These were to include, potentially, a waterfront hotel and conference centre; marinas for tourist and commercial vessels; a public 'river walk'; eighty new residences; a United States Coast Guard Museum; office and retail space; 'park support' for the proposed adjacent state park. The development plan as proposed also included the now-closed 32-acre Naval Undersea Warfare Center, a regional water pollution control facility and approximately 115 residential parcels. It was expected that the proposal would generate 700–3,150 jobs and between $680,544 and $1,249,843 in property tax revenues. After approving the integrated development plan that it was argued would revitalise its ailing economy, the City of New London, through its development agent, purchased most of the property designated for the development of the urban-renewal project from willing sellers. It was then forced to initiate condemnation proceedings when petitioners, the owners of the rest of the property, refused to sell. The petitioners then brought this state court action, claiming that the taking of their properties would violate the 'public use' restriction in the Fifth Amendment's Takings Clause. The Supreme Court ruled in a 5-4 decision that the city's proposed disposition of petitioners' property qualified as 'public use' within the meaning of the Takings Clause. This was despite the fact that none of the properties identified to be taken were actually subject to 'blight'. The ruling stated that, given the comprehensiveness of the plans, economic benefit could still be argued as the grounds of public benefit based on benefit as public purpose. Although the city could not take petitioners' land simply to confer a private benefit on a particular private party (see, eg, *Midkiff,* 467 U.S., at 245), the takings at issue here would be executed pursuant to a carefully considered development plan, which was not adopted 'to benefit a particular class of identifiable individuals', *ibid.* Moreover, whilst the city was not planning to open the condemned land—at least not in its entirety—to use by the general public, this 'Court long ago rejected any literal requirement that condemned property be put into use for the … public.' (*Idem.,* at 244). Rather, it had embraced the broader and more natural interpretation of public use as 'public purpose'.
2. U.S Const. amend V. http://www.law.cornell.edu/constitution/fifth_amendment.

3. Robert Caro, *The Power Broker: Robert Moses and the Fall of New York* (New York, Alfred A Knopf, 1974); Richard Plunz, *A History of Housing in New York City: Dwelling Type and Social Change in the American Metropolis* (New York, Columbia University Press, 1990).
4. http://www.castlecoalition.org/index.php?option=com_content&task=view&id=34&Itemid=119.
5. Daniel B. Kelly, 'The Public Use Requirement in Eminent Domain Law: A Rationale Based on Secret Purchases and Private Influence', *Cornell Law Review*, 92, no. 1 (2006).
6. He cites a number of recent cases in the US, and following Kelo v the City of New London, where there has been exceptional deploying of the takings clause.
7. Michael A Heller, James E Krier, 'Deterrence and Distribution in the Law of Takings', *Harvard Law Review*, 112 (1999).
8. Editorial, 'The Public Use Limitation on Eminent Domain: An Advance Requiem', *Yale Law Journal*, 58 (1949).
9. D. B. Kelly, 'The Public Use Requirement in Eminent Domain Law', p. 2.
10. Tracey B Augur in 'Some minimum standards in site planning for low-Cost Housing', in *Proceedings in Joint National conference on Housing in Chicago*, 1936; cited in Greg Hise, *Magnetic Los Angeles* (London, The Johns Hopkins University Press, 1997), p. 30.
11. Hilary Ballon, 'Robert Moses and Urban Renewal: The Title I Program', in *Robert Moses and the Modern City: The Transformation of New York*, Hilary Ballon, Kenneth T Jackson, eds (New York, W.W Norton & Company, 2007), p. 96: quoting the Report from 'The Relationship between Slum Clearance and Urban Redevelopment and Low-Rent Housing' (Washington, DC, Division of Slum Clearance and Urban Redevelopment Housing and Home Finance Agency, 1950).
12. This catalogue of publications includes: Friederike Schneider, ed., *Floor Plan Manual: Housing* (Basel, Birkhauser, 2004; third edition: first edition published 1994, following the work of Professor Hellmuth Sting 1970s); Javier Mozas, Aurora Fernandez Per, *Densidad/Density: New Collection Housing* (Vitoria-Gasteiz, Spain, a+t Architecure Publishers, 2006); Hilary French, *New Urban Housing* (London, Laurence King Publishing, 2006); Aurora Fernandez Per, Javier Mozas, Alex S Ollero, *10stories of Collective Housing: Graphical Analysis of Inspiring Masterpieces* (Vitoria-Gasteiz, Spain, a+t Architecture Publishers, 2013); Aurora Fernandez Per, Javier Mozas, Javier Arpa, *Dbook: Density Data Diagrams Dwellings: A Visual Analysis of 64 Collective Housing Projects* (Vitoria-Gasteiz, Spain, a+t Architecture Publishers, 2007); Antonio Gimenez, Conchi Monzonis, eds, *Collective Housing* (Valencia, Spain, Editorial Pencil SL, 2007); Eric Firley, Caroline Stahl, *The Urban Housing Handbook* (West Sussex, John Wiley and Sons Ltd, 2009); Like Bijlsma, Jochem Groenland, *The Intermediate Size: A Handbook for Collective Dwellings* (Netherlands, Uitgeverij SUN, 2006).
13. 'Some minimum standards in site planning for low-Cost Housing' in *Proceedings in Joint National conference on Housing in Chicago*, cited in G. Hise, *Magnetic Los Angeles*, *op. cit.*, p. 30.
14. Clarence. A. Perry, 'Neighbourhood and Community Planning: Regional Plan of New York and Its Environs' (New York, Committee on Regional Plan of New York and Its Environs, 1929).
15. Larry Lloyd Lawhon, 'The Neighborhood Unit: Physical Design or Physical Determinism?', *Journal of Planning History*, 8 (2009), p. 130.
16. C. A. Perry, 'Neighbourhood and Community Planning', *op. cit.*
17. The purpose of this paper is not to account for the origins or single point of departure for the refined dis-

tillation of the idea of the neighbourhood unit as it was proposed in 1929. It is worth noting that evidence can be found for aspects of the neighbourhood unit in earlier concepts such as Ebenezer Howard's 'Garden Cities of To-Morrow' from 1898: Sir Ebenezer Howard, *Garden Cities of To-Morrow*, F.J Osborne, ed. (Cambridge, Mass., The MIT Press, 1962; [1902]); the sociology writings of Charles Horton Cooley: C.H Cooley, *Social Organisation* (New York, Charles Scribner's Sons, 1909); the settlement house movement run by Jane Addams in the Chicago of the 1910s; see, Peter Hall, *Cities of Tomorrow: An Intellectual History of Urban Planning and Design in the Twentieth Century* (Oxford, Blackwell Publishing, 1988).

18. Tracey B Augur, 'Analysis of the Plan of Stuyvesant Town', *The Journal of American Planning* (Autumn, 1944), p. 9.
19. Evidence of the diagrammatic function of the neighbourhood unit is its global spread within modernity and the role that it has played in emerging cities as part of projects of modernity and modernisation. The neighbourhood unit was not only deployed in the English-speaking world. Lu reports that it was implemented by Republican China during the early twentieth century (1911–49 prior to the 1949 revolution); by Japanese colonial planners in the planning of cities such as Changchun and Datong in the 1930s in China; following this, in the late 1940s, Chinese planners initiated proposals for several major cities based on the neighbourhood unit which were finally completed after the revolution.[19] Socialist planners also experimented with several competing residential planning ideas during the 1950s: the micro-district, known as the *xiaoqu* in Chinese and *mikrorayon* in Russian, was also very similar in principle to the neighbourhood unit. See Duangfung Lu, 'Travelling Urban Form: The Neighbourhood Unit in China', *Planning Perspectives*, 21, (October, 2006). Equally, it is worth noting some of the more influential evolutions that the concept has gone through since 1929: for example, Lucio Costa's late-1950s 'Superquadra', which was developed and implemented as part of the Brasilia master-plan; see Fares el-Dahdah, ed., *Case: Lucio Costa Brasilia's Superquadra* (London, Prestel 2005). What is of interest here is not the accuracy with which the original 1929 diagram was reproduced or reflected in these global resonances, nor is the argument one concerned with the spread of the neighbourhood unit as part of Western planning norms and culture, through a kind of cultural imperialism. It is, rather, simply to note that predicating modernity is a spatial reasoning that is concerned with the size and scale of units of population in terms of organisation and governance, and particularly in terms of what constituted the relationships between work, transport, leisure and home. This concern has been central to the way in which we have reasoned spatially within liberal democracy about cities and the populations of people who live in them, particularly since the 1920s.
20. Robert E. Park, 'The City: Suggestions for the Investigation of Human Behaviour in the Urban Environment', in *The City*, Robert Park, Ernest Burgess, Roderick McKenzie, eds (Chicago, IL, The University of Chicago Press, 1925), p. 8.
21. Lewis Mumford, 'Home Remedies for Urban Cancer', in *The Lewis Mumford Reader*, Donald L Miller, ed. (New York, Pantheon, 1986; [1962]), p. 194 (original publication: 'The Skyline: Mother Jacobs' Home Remedies', *New Yorker* [1st December,1962]).
22. *Ibid.*
23. Robert E. Park, 'The City: Suggestions for the Investigation of Human Behaviour in the Urban Environment', *American Journal of Sociology*, 20 (1915). See also, R. E. Park, 'The City: Suggestions for the Investigation of Human Behaviour in the Urban Environ-

ment', in *The City*, Robert Park, Ernest Burgess, Roderick McKenzie, eds (Chicago, IL, The University of Chicago Press, 1925), p. 8; Engin F. Isin, Thomas Osborne, Nikolas Rose, 'Governing cities: liberalism, neoliberalism, advanced liberalism', in *Urban Studies Programme, Working Paper No. 19* (Toronto, York University, 1998), p. 17.

24. Much criticism has been directed at both the neighbourhood unit and the Superquadra on the grounds of what is claimed to be a spatial determinism. Typical of this argument is that both of these planning diagrams are a kind of failed Utopia that has left empty cities and dysfunctional living environments, particularly in terms of the civic life of cities: see Richard J. Williams, 'Modernist Civic Space and the Case of Brasilia', *Journal of Urban History*, 32, no. 1 (November, 2005). Williams, for example, constructs an argument against calls by writers such as Jane Jacobs for a return to the existing and traditional city as the only *locus* for a choreographed and rich public life. He argues that what Jacobs and those writing around her are arguing for is a city understood only in 'terms of the zones of consumption and display of the urban bourgeoisie … The street café with its pleasures and rituals and its strictly defined place in a hierarchy of urban entertainment, too often stands in for the city as a whole'; *ibid.*, p. 121.
25. For example, see Colin Gordon, 'Governmentality: An Introduction', in *The Foucault Effect*, Graham Burchell, Colin Gordon, Peter Miller, eds (Chicago, IL, University of Chicago Press, 1991).
26. Lawrence Barth, 'Michel Foucault', in *Key Sociological Thinkers*, Rob Stones, ed. (London, Macmillan Press, 1998).
27. Katharina Borsi, 'Drawing and Dispute: The Strategies of the Berlin Block', in *Intimate Metropolis: Urban Subjects in the Modern City*, Diana Periton, Vittoria Di Palma, Marina Lathouri, eds (London, Routledge, 2009); C. Gordon, 'Governmentality: An Introduction', *op. cit.*
28. Work in the category of muckraker included the kind of adventures into the slums of inner-urban America seen in the images produced by photographers such as Jacob Riis, who chronicled the life of the urban poor. New innovations in photography were very important to the effect of muckraking material on the public imagination, as was the willingness of newspapers to publish the material for a middle-class American constituency. Riis published *How the Other Half Lives: Studies Among the Tenements of New York* in the 1890s. With a background in Police reporting on the Lower East Side, he became an advocate and spokesman for the rights of the poor. President Roosevelt first used the term 'muckraker' in a speech in 1906.
29. Alexander von Hoffman, 'A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949', *Housing Policy Debate, Fanny Mae Foundation*, 11, no. 2 (2000), p. 307.
30. *Ibid.*, p. 307. With both sides of the argument having considerable support in Congress, a relentless process of lobbying and counter-lobbying stymied efforts to pass a comprehensive post-war housing bill until the 1949 Federal Housing Act.
31. Tarsha Finney, 'The object and strategy of the ground: architectural transformation in New York City housing projects', *The Journal of Architecture*, 20, 6 (December, 2015).
32. The Limited Dividend Housing Companies Act of 1926 allowed for twenty years' tax exemption for participating projects, and permitted municipalities to use eminent domain. In return developers were to limit their profits to 6% annually. Nicholas Dagen Bloom, Mathew Gordon Lasner, eds, *Affordable Housing in New York: The People, Places and Policies That Transformed a City* (Princeton, Princeton University Press, 2016), pp. 40–41.

33. 'Gov. Smith Signs New Housing Bill', *New York Times* (11th May, 1926), pp. 1, 40. Of the projects produced with the support of this law, none exercised eminent domain, eg., the Amalgamated Cooperative Apartments in the Bronx, completed in 1927 and developed by the amalgamated Clothing Workers of America. Many of these projects were co-operative developments, rather than what was more common later in the form of condominia.
34. Alexander von Hoffman, 'A Study in Contradictions', *op. cit.*, p. 304.
35. *Ibid.*, p. 304. See also Richard O. Davies, *Housing reform during the Truman administration* (Columbia, MO, University of Missouri Press, 1966); Mark I. Gelfand, *A Nation of Cities: The Federal Government and Urban America 1933–65* (London, Oxford University Press, 1975).
36. Alexander von Hoffman, 'A Study in Contradictions', *op. cit.*, p. 304. Soon after its passing, the Housing Act of 1937 experienced political difficulties. From 1938–42 a number of anti-New Deal politicians were elected to Congress and succeeded in cutting off public-housing funding. It was weakened by Nathan Straus, the administrator at the US Housing Authority responsible for initial assistance to local authorities charged with developing 50,000 units of housing. He was an abrasive leader and alienated key staff members and congressmen, resigning in 1942. In addition, the Second World War intervened, Congress cut off funding for any public low-income housing, utilising the resources for defence housing only. It was not until the 1949 Housing Act that Congress agreed to fund any more public housing; *ibid.*, p. 303.
37. T. B. Augur, 'Analysis of the Plan of Stuyvesant Town', *op. cit.*, p. 9. Stuyvesant Town, completed in 1947, comprised 35 buildings housing 24,000 people in 8775 flats. It was designed by Irwin Clavin, H.F Richardson, George Gore and Andrew Eken. See also *Robert Moses and the Modern City: The Transformation of New York*, Hilary Ballon, Kenneth T. Jackson, eds (New York, W.W Norton & Company, 2007), p. 242.
38. William A. Stanton, 'Blighted Districts in Philadelphia': Paper presented at the Tenth National Conference on City Planning, 1918; quoted in, Colin Gordon, 'Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight', *Fordham Urban Law Journal*, XXXI (2004). See also Robert Fogelson, *Downtown: Its Rise and Fall 1890–1950* (New York, Yale University Press, 2003).
39. The full quotation is that a Blighted area is 'One that has become an economic liability to the community. A slum is a residential area where the houses and conditions of life are of a squalid and wretched character and which hence has become a social liability to the community'; from 'Slums Large-Scale Housing and Decentralization', in, J. M. Gries, J. Ford, eds, *Publication of the President's Conference on Home Building and Home Ownership. Final Reports of Committees* (New York, John Ihlder, 1932), p. 1, Part 3.
40. M. A. Heller, J. E. Krier, 'Deterrence and Distribution in the Law of Takings', *op. cit.*, p. 55.
41. Quintin Johnstone, 'Federal Urban Renewal Program', *Yale Law School Faculty Scholarship Series* (New Haven, CT, Yale Law School, 1958).
42. *Ibid.*, p. 1.
43. *Ibid.*
44. H. Ballon, 'Robert Moses and Urban Renewal: The Title I Program', in *Robert Moses and the Modern City, op. cit.*
45. Editorial, 'The Public Use Limitation on Eminent Domain: An Advance Requiem', *Yale Law Journal,* 58 (1949), pp. 599–616; 599.
46. Wendell E.Pritchett, 'The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain', *Yale Law and Policy Review*, 21, no. 1 (2003), p. 2.

47. The full text of the Fifth Amendment reads: 'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; **nor shall private property be taken for public use, without just compensation**.'
48. C. M. Rose, book review, 'Takings, Federalism, Norms', *Yale Law School Faculty Scholarship Series*, Paper 1810 (1996).
49. T. S. Ulen, book review, 'Regulatory Takings: Law, Economics and Politics; Compensation for Regulatory Takings: An Economic Analysis with Applications', *University of Wisconsin Press: Land Economics* (2009), p. 74. This makes sense in a social, cultural and political context obsessed with property rights and individual freedoms and their erosion. (See also W. E. Pritchett, 'The "Public Menace" of Blight', *op. cit.*)
50. *Ibid.*
51. *Ibid.*
52. U.S Const. amend V (my emphasis added).
53. W. E. Pritchett, 'The "Public Menace" of Blight', *op. cit.*, p. 2.
54. The Fourteenth Amendment (Amendment XIV) to the United States Constitution was adopted on 9th July, 1868, as one of the Reconstruction Amendments. It addresses citizenship rights and equal protection of the laws, and was proposed in response to issues related to former slaves following the US Civil War. The amendment was bitterly contested, particularly by Southern states, which were forced to ratify it in order to regain representation in Congress. The Fourteenth Amendment, particularly its first section, is one of the most litigated parts of the Constitution, forming the basis for landmark decisions such as *Roe v. Wade* (1973), regarding abortion, and *Bush v. Gore* (2000), regarding the 2000 presidential election. It applies to the actions of all state and local officials, but not to those of private parties. The second, third and fourth sections of the amendment are seldom, if ever, litigated. The fifth section gives Congress enforcement power. The amendment's first section includes several clauses: the Citizenship Clause, Privileges or Immunities Clause, Due Process Clause and Equal Protection Clause. The Citizenship Clause provides a broad definition of citizenship, overruling the Supreme Court's decision in *Dred Scott v. Sandford* (1857), which had held that Americans descended from African slaves could not be citizens of the United States. The Privileges or Immunities Clause has been interpreted in such a way that it does very little. The Due Process Clause prohibits state and local government officials from depriving persons of life, liberty or property without legislative authorisation. This clause has also been used by the federal judiciary to make most of the Bill of Rights applicable to the states, as well as to recognise substantive and procedural requirements that state laws must satisfy. See also, Editorial, 'The Public Use Limitation on Eminent Domain', *op. cit.*, pp. 599–616.; 599; 601.
55. *Ibid.*
56. *Ibid.*, p. 601.
57. *Ibid.*, p. 603.
58. *Ibid.*
59. *Ibid.*, p. 604.
60. *Ibid.*, p. 610.
61. *Ibid.*, p. 611: 'The right of the United States to condemn land is recognized when it is necessary and proper to do so in carrying out its federal powers' United States v. 4,450.72 Acres of Land, Clearwater

County, State of Minnesota, 27 F sup. 167, 174 (D. Minn. 1939).

62. *Ibid.* The question of public use came second in this equation, with the conclusion that 'it is a public use if the project comes within the purview of federal power'.
63. *Ibid.*, p. 606: 'Furthermore, since the compensation which the condemner pays for the acquisition of the property is generally considerably less than the value of the property after the creation of the improvement, the profits thus realized aid in defraying the cost of the improvement itself'.
64. It was in 1934 that the first public authority directed specifically at housing, the New York City Housing Authority (NYCHA), was established. It was based on the public-authority model established with the Port Authority of New York and New Jersey around 1917, to run rail and port infrastructure. This first American public authority was an answer to the problem of how to govern in the face of a regulatory failure in the functioning of the railways and ports across the uncooperative jurisdictional borders and boundaries of New York and New Jersey. Later housing authorities were similarly established to exercise governmental powers such as eminent domain in the context of an ongoing 'urban crisis' of decentralisation and urban blight in and as part of a resumption of powers that had been previously ceded to local government. The open character of the public authority as it developed allowed it to continue to respond to technological transformations and changes as they emerged. Take, for example, the consequences of car and lorry freight systems challenging rail's dominance over passenger and goods movements in and out of the city; or the later advent of air travel and freight affecting the operation of the city. The public authority as a mechanism was able constantly to extend its territory of operation. Understood and trusted, it was to be part of the disinterested operation of 'Progressive Era ambitions for scientific public administration'. See Joel Schwartz, *The New York Approach: Robert Moses, Urban Liberals and Redevelopment of the Inner City* (Columbus, OH, Ohio State University Press, 1993). As a vehicle for administration that embodied Progressive Era ambitions, it was understood that the Port Authority would 'reshape a region for the people, while remaining removed from the vulnerabilities of democratic accountability'; *ibid.*, p. 677. See also Keith D. Revell, *Building Gotham: Civic Culture and Public Policy in New York City 1898–1938* (London, The Johns Hopkins University Press, 2003) and 'Cooperation, Capture and Autonomy: The Interstate Commerce Commission and the Port Authority in the 1920s', *Journal of Policy History, Cambridge University Press,* 12, 2 (2000), pp. 177–214.
65. The courts occasionally outlawed it on the grounds of 'violating the requirement that the taking must be for a public use,' not on the grounds of a broad conception of 'public use', but rather on the narrow test as to whether the public had a 'right to use'; *ibid.*, p. 607.

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